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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/707,186

11/25/2003

Richard Liddy

81087759

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28395 7590 12/19/2006
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EXAMINER

MASKULINSKI, MICHAEL C

ART UNIT

PAPER NUMBER

2113

MAIL DATE

DELIVERY MODE

12/19/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/707,186

Applicant(s)

LIDDY ET AL.

Examiner

Michael C. Maskulinski

Art Unit

2113

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The Applicant's arguments are not persuasive.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: see attached Status of Claims.



Michael C Maskulinski
Examiner
Art Unit: 2113

Status of Application

Claim Rejections - 35 USC § 102

1. Claims 1, 2, 17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Chandler et al., US 2004/0256718 A1.

Claim Rejections - 35 USC § 103

2. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler et al., US 2004/0256718 A1, and further in view of Advanced Failure Modes and Effects Analysis of Complex Processes, by Kmenta et al.

Allowable Subject Matter

3. Claims 5-15, 18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claim 16 is allowed.

Response to Amendment

5. The Affidavit filed on December 1, 2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Chandler et al. reference.
6. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Chandler et al. reference to either a constructive reduction to practice or an actual reduction to practice. The period between June 18, 2003 and July 5, 2003 is unaccounted for by the Affidavit. The Applicants' statement that the invention was diligently reduced to practice is not sufficient, but rather evidence accounting for the Applicants work during that period is required

Art Unit: 2113

7. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Chandler et al. reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). In the e-mail dated March 17, 2003, there is no evidence that the Applicants conceived of the claimed invention—specifically the Graphical User Interface and visual display. In fact, it appears that the only evidence of conception is best summed up as “[NEED TO EXPLAIN HOW]”.

8. The Examiner made it very clear in the last Office Action that a proper Affidavit would include showing diligence for the entire period between June 18, 2003 and July 5, 2003. The Applicants have not done this and any new amendments filed will not be considered since they are not seasonably presented

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Maskulinski whose telephone number is 571-272-3649. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2113

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael C Maskulinski
Examiner
Art Unit 2113